

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

DAVID SCOTT HARRISON,  
Plaintiff,

v.

JEFFREY BEARD, et. al.,  
Defendants.

No. C 16-1880 NJV (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. (Doc. 6.)

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained  
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
8 framework of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then determine  
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,  
11 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

#### 16 **B. Legal Claims**

17 Plaintiff, a man, presents an equal protection violation based on the differing  
18 treatment of women at female institutions.

19 "The Equal Protection Clause of the Fourteenth Amendment commands that no  
20 State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which  
21 is essentially a direction that all persons similarly situated should be treated alike." *City of*  
22 *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457  
23 U.S. 202, 216 (1982)); *Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005)  
24 (evidence of different treatment of unlike groups does not support an equal protection  
25 claim). Classifications such as those based on gender, are "subject to somewhat  
26 heightened review" and "will survive equal protection scrutiny to the extent they are  
27 substantially related to a legitimate state interest." *Id.* at 441.

Plaintiff argues that he is denied certain clothing, foods, drinks, objects, and appliances from vendors that female inmates with a similar classification status at other prisons can purchase. Plaintiff states that he "is not transgender nor transexual, nor does he exhibit or claim any gender identity other than male. [He] does not identify psychologically with the female sex." Complaint at 3. Plaintiff repeatedly refers to vendor products, but provides no specific details and it is not clear what items he is unable to purchase that female inmates at other prisons can purchase. While he has set forth the basic elements of an equal protection claim, he has failed to present sufficient allegations that plausibly give rise to an entitlement to relief. See *Iqbal*, 556 U.S. at 679. The complaint will be dismissed with leave to amend for plaintiff to provide more information about specific items he is unable to purchase that women are allowed to purchase. He must provide additional information so defendants, if they are served, can adequately respond to the allegations. See *Gonzalez v. Mullen*, 2013 WL 1333560, at \*3-4 (N.D. Cal. March 29, 2013) (plaintiff identified specific items that females could purchase but men were prohibited from obtaining, though summary judgment granted for defendants).

### CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of this case.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion.

1 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
2 Federal Rule of Civil Procedure 41(b).

3 **IT IS SO ORDERED.**

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5 Dated: July 11, 2016.

  
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NANDOR J. VADAS  
United States Magistrate Judge